IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2214 of 2005

with

SPECIAL CIVIL APPLICATION No 5225 of 2005

with

SPECIAL CIVIL APPLICATION No 5150 of 2005

with

SPECIAL CIVIL APPLICATION No 5229 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

YASHVI BHARATKUMAR SHAH THRO'HER FATHER DR.BHARATKUMAR

Versus

GUJARAT UNIVERSITY

Appearance:

1. Special Civil Application No. 2214 of 2005

MR MRUGEN K PUROHIT for Petitioner No. 1-2

MRS VD NANAVATI for Respondent No. 1

MR TUSHAR MEHTA for Respondent No. 2

NOTICE SERVED BY DS for Respondent No. 3,4
TANNA ASSOCIATES for Respondent No. 4

2. Special Civil Application No. 5225 of 2005
MR MRUGEN K PUROHIT for Petitioner No. 1
MRS VD NANAVATI for Respondent No. 1
with
SPECIAL CIVIL APPLICATION Nos.5125 and 5229 of 2005

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 13/05/2005

COMMON CAV JUDGEMENT

#. As common question of law and facts arise in this group of petitions, present Special Civil Applications are disposed of by this common judgment and order.

#. All the petitioners are students who got their admission in the management quota in respondent No.2 Kesar Sal Medical College & Research Institute which is a self financed Medical College and as the respondent No.1 - Gujarat University had refused to grant enrollment, all of them have prayed for an appropriate writ, order or direction quashing and setting aside the communications dated 21.12.2004 and 29.12.2004 of the respondent No.1 University. The petitioners have also prayed for an appropriate writ, order or direction forbearing the respondents from interfering with the admissions granted in favour of the petitioners.

#. Special Civil Application No.2214 of 2005 is filed by two students viz. (1) Yashvi Bharatkumar Shah and (2) Rahul Shivkumar Sodani. Special Civil Application No.5225 of 2005 with Special Civil Application No.5150 of 2005 are filed by two students viz. (1) Tejendra Ashokbhai Ramani and (2) Nisharg P. Shah respectively, whereas Special Civil Application No.5229 of 2005 is filed by Badal Girishbhai Thakkar. It is the case of the petitioners of Special Civil Application Nos.2214 of 2005, Special Civil Application No.5225 of 2005 and Special Civil Application No.5150 of 2005 that all of them had passed Standard -12 Examination conducted by the Gujarat Secondary and Higher Secondary Education Board and as they were desirous of seeking admission in the faculty of medicines, they appeared in the common entrance test conducted by the Gujarat Self Finance Medical and Para Medical Association, Gujarat State (hereinafter referred to as the "GSF Association" for brevity) conducted on 28.7.2004. It is the case of the

petitioners of Special Civil Application No.2214 of 2005 that they were placed at Sr.No.588 and 590 in the merit list published by GSF Association. Similarly, the petitioners of Special Civil Application No.5225 of 2005 and Special Civil Application No.5150 of 2005 were placed at Serial No.471 and 333 in the merit list published by GSF Association.

So far as the petitioner of Special Civil Application No.5229 of 2005 is concerned, he was placed at Serial No.171 in the merit list prepared by GSF Association.

#. It is common contentions on behalf of the petitioners of Special Civil Application Nos.2214/ 2005, 5150 / 2005 and 5225 / 2005 that they were desirous of seeking admission in the faculty of medicines and dental, they had approached various self financed medical colleges and had appeared in "Common Entrance Test" conducted by GSF Association. But considering their merits, they could not get admissions in any of the Self Financed Colleges and were informed, admissions will be offered as and when there is any vacancy, college would invite applications and they could apply at that stage. It is the contention of the petitioners that on 30.9.2004 an advertisement came to be issued by the respondent No.2 Kesar Sal Medical College and Research Institute (hereinafter referred to as the "Institute" for brevity) in the local newspaper inviting the applications from the students who had appeared in the common entrance test conducted by the GSF Association and the petitioners immediately applied to the "Institute" along with all requisite documents on 30th September, 2004 itself and on 30th September, 2004 itself all the petitioners were offered admission by the Institute and in pursuance thereof, the petitioners paid the prescribed fees and were pursuing their study in the 1st Year M.B.B.S. course at respondent No.2 Institute. It is the case of the petitioners that the petitioners along with the other students filled up their enrollment forms and the same were forwarded to the respondent No.1 University through the Institute and by communication dated 21.12.2004 and 28.12.2004 addressed by the University to the respondent Institute, the petitioners are informed that the respondent University has refused to enroll the petitioners to whom the admissions were offered by the Institute in the process of reshuffling, on the ground that their names do not appear in the list submitted by the GSF Association. It is the case of the petitioners that thereafter the respondent Institute has by its letters dated 28.12.2004 and 5.1.2005 sought to explain to the University that admissions granted in

favour of the petitioners and other three students were strictly on merits and on the basis of the list published by the GSF Association. However, subsequently after letter dated 29.12. 2004 the respondent Institute has not received any communication from the University. Being aggrieved and dissatisfied with the decision of the respondent University in refusing to enroll them, the petitioners have preferred the present special civil applications under Article 226 of the Constitution of India for the aforesaid reliefs and the prayers.

#. It is the case of the petitioners of Special Civil Application No.5229 of 2005 i.e. Badal Girishbhai Thakker that in fact, he got admissions on 31.7.2004 and the petitioner's name was in the merit list at Sr.No.171 and the petitioner was granted admission during counselling conducted at Baroda conducted by the GSF Association and upon payment of token fees he was also issued admission order and receipt by the Association. It is the case of the said petitioner that after admission was granted in favour of the petitioner, admissions were granted to approximately 24 other students who were lower in the merit list than the petitioners. It is submitted that by error or mistake, it appears that the name of the petitioner does not appear in the admission list submitted by the GSF Association and as the respondent No.1 University has refused to grant enrollment, the petitioner has preferred the present special civil application under Article 226 of the Constitution of India for the aforesaid prayers and the reliefs.

#. Shri K.S.Nanavati, the learned Senior Advocate appears with Shri M.K.Purohit the learned advocate on behalf of the petitioners and Ms.V.D.Nanavati, learned advocate appears on behalf of the respondent No.1 University. Initially, Shri Mitul K. Shelat, the learned advocate appeared on behalf of the respondent No.2 Institute, however, subsequently, he withdrew his appearance and Shri Tushar Mehta, the learned advocate appeared on behalf of the respondent No.2 - Institute.

#. The learned Single Judge of this Court (Coram : K.M.Mehta, J.) had passed the following order on 18.2.2005.

"The petitioners have filed this petition with a prayer that this Court may issue a writ of mandamus or order quashing and setting aside the impugned communications dated 21.12.2004 and 29.12.2004 of the respondent University and

> further prayed that the respondents may be restrained from interfering with the admission granted in favour of the petitioners. The learned advocate for the petitioner has invited my attention to the letter addressed by the Hospital to the Registrar, University, in which it has been stated that even Mr.Justice R.J. Shah Committee has also indicated their decision which is on page 16. Hence notice returnable on 4.3.2005. Status quo as on today to be maintained. Direct Service is permitted."

#. Thereafter, the aforesaid Special Civil Applications came to be heard by this Court 9.3.2005. It was contended on behalf of the petitioners that they have passed common entrance test examination conducted by the GSF Association and they have got admissions on merits on reshuffling and it was submitted on behalf of the respondent No.1 University that the University has not received any communication from the said GSF Association after reshuffling and therefore, names of the petitioners are not enrolled. Under the circumstances, it was considered to be just and proper to join the GSF Association as the party respondent No.3 and accordingly, the GSF Association was joined as the party respondent No.3. Thereafter, by order dated 30.3.2005 Mr.Justice R.J.Shah (Retd.) Committee was joined as the party respondent No.4. Shri N.D.Nanavati, the learned Senior Advocate appears on behalf of the GSF Association and Shri B.P.Tanna, the learned Senior Advocate appears on behalf of Justice (Retd) R.J.Shah Committee. Shri N.D.Nanavati, the learned senior advocate appearing on behalf of the GSF Association has produced the entire file with regard to the admissions given in the self financed medical colleges and the correspondence between the GSF Association and all the self financed medical and para medical institute. In fact, this Court directed the GSF Association to produce the relevant files and the entire record with regard to the admissions by order dated 23.3.2005 and in pursuance thereto, Shri Nanavati has produced the entire record with regard to admissions.

#. It is the contention of the petitioners that all the petitioners except the petitioner of Special Civil Application No.5229 of 2005 are granted admission in first year M.B.B.S. in management quota at respondent No.2 institute on 30.9.2004 on reshuffling and pursuant to the advertisement dated 30.9.2004 issued by the respondent No.2 Institute inviting applications for admission in first year M.B.B.S. course in management quota and all of them are granted admission on 30.9.2004.

The petitioners of Special Civil Application No.2214 of 2005 have produced receipt dated 30.9.2004 with regard to payment of Rs.1.30 Lakh towards the tuition fees issued by the respondent No.2 institute to show that they were granted admission on 30.9.2004 and even they have paid fees on 30.9.2004. So far as the petitioners of Special Civil Application No.5150 of 2005 viz. Nisharg P. Shah is concerned, he has produced one typed copy of the receipt dated 30.9.2004 issued by respondent No.2 Institute showing that he was granted admission on 30.9.2004 and even tuition fees was paid on 30.9.2004. So far as the petitioner of Special Civil Application No.5225 of 2005 i.e. Tejendrabhai Ashokbhai Ramani is concerned, there is no receipt or xerox and / or typed copy of such receipt produced on record and so far as the petitioner of Special Civil Application No.5229 of 2004 is concerned, he has produced typed copy of the receipt bearing Receipt No.35 dated 31.7.2004 with regard to payment of Rs.1.29 Lakh towards tuition fees. He has also produced admission order dated 31.7.2004 issued by the GSF Association admitting the petitioner in the respondent No.2 institute. Thus, it is the case of the petitioners that they got admission on 30.9.2004 that is the last date stipulated by the Hon'ble Supreme Court of India with regard to granting of admission in medical colleges and they have got admission on merits in the management quota and were studying since October, 2004, it is requested to quash and set aside the action of the respondent university not to enroll them. It is submitted that insistence on the part of the University to get approval from GSF Association is absolutely illegal and beyond jurisdiction and powers of the University. It is submitted that authority and powers regarding validity of the admissions granted by the Self Financed Colleges is with the Committee appointed for the purpose i.e. in the present case Justice (Retired) R.J.Shah Committee and in the list submitted by the respondent Institute to the Committee includes the names of the petitioners and in fact, the respondent Institute had sent the list on 7.10.2004 to the Committee and the Committee has not rejected any of the admissions granted by the College and therefore, it is not open to the University to refuse to grant enrollment and in effect, to cancel the admissions which are otherwise validly granted. By way of amendment, the petitioners have come out with the case that for the purpose of reshuffling, the GSF Association is not required to be informed and/or their approval is not required and only at the first instance at the time of counseling the entire procedure and process was conducted by the GSF Association on 31.7.2004 and for the seats which fallen vacant

subsequently, it is the concerned institute to give admission on reshuffling. It is also further submitted that no other students have made any complaint and therefore, it is requested to allow the present special civil applications.

##. Affidavit-in-reply is filed by on behalf of the respondent No.1 - University. It is submitted that under Rule-3.2 of the Self Financed Medical / Dental / Physiotherapy / Homeopathy colleges, the institute will be at liberty to admit the students in management quota seats (50 % percent) as per merit list prepared on the basis of Joint Admission Test conducted by GSF Association under the supervision of the Committee appointed under the Chairmanship of Retd. High Court Judge, if approved by the Committee. Rule-3.3 provides that the admissions to SFI's management quota shall also be made from the merit list prepared by the Centralized Medical Admission Committee of the State. Rule 3.4 provides that to avoid multiplicity of procedure as well as to ensure that rule of merit and transparency and to avoid frequent reshuffle to fill up resultant vacancies, and inconvenience to students and parents and for smooth admission process for Managements, Centralized Medical Admission Committee will facilitate counselling. Managements of Self - Financed Medical / Dental / Physiotherapy / Homeopathy Institutes will counsel and admit the students at a Common Counselling Center at the place and time scheduled to be decided by the Centralized Medical Admission Committee. It is submitted that enrollment list of the students to be admitted in the respective colleges is sent to the University by GSF Medical Association as per the guidelines of the Hon'ble Supreme Court of India and the list of the students admitted in the respondent No.2 Institute i.e. Kesar Sal Medical College and Research Institute was sent to the University by GSF Association on 8.10.2004, in which, the names of the petitioners do not figure and therefore, the University has not enrolled the students i.e. petitioners and their forms have been sent back to the colleges.

##. Affidavit-in-reply is filed on behalf of the respondent No.2 - Institute, it is submitted by the respondent No.2 institute that the petitioners were granted admissions against the seats which were vacated by the students originally granted admissions and that the admissions were granted after inviting applications through public advertisement and from those students who appeared in the common entrance test conducted by the GSF Association. To show that the admissions granted to the

petitioner which are based on the basis of the merit and in accordance with law and therefore, it is submitted that the respondent No.2 has exercised its option to grant admissions on the basis of common entrance test to be conducted by GSF Association and common entrance test was conducted on 28.7.2004 pursuant to the orders of the Hon'ble Supreme Court of India and merit list was published and the respective colleges, which were members of the association, granted admissions to the students on the basis of the said merit list. It is also further submitted that four students so admitted vacated their seats on 29.10.2004 which gave rise to four vacancies and the respondent No.2 institute published the advertisement in the newspaper inviting applications from the prospective students who had appeared in the common entrance test and as the petitioners applied pursuant to the said advertisement and after verifying the documents, admissions were granted to the petitioners. It is further submitted that the entire details pursuant to the admission procedure adopted by the respondent No.2 Institute was duly submitted to the Justice R.J. Shah (Retd.) Committee vide letter dated 5.10.2004 which was received by the said Committee on 7.10.2004. It is also further submitted that the respondent No.2 institute submitted to the respondent No.1 University enrollment forms of the student admitted in the college by communication dated 21.12.2004 but the University refused to enroll the petitioners on the ground that their names do not figure in the list sent by the GSF Association. It is the case of the respondent No.2 Institute that thereafter by communication dated 28.12.2004 it was brought to the notice of the University that admissions were granted on the basis of the merit. However, still enrollments are not granted. It is submitted that the provisions referred to are not applicable to the University and that validity of the Rules was subject matter of challenge before this Court as well as before the Hon'ble Supreme Court of India and in the said proceeding by interim order, the Hon'ble Supreme Court of India permitted the GSF Association to conduct the common entrance test and the members to grant admission on said basis. It is further submitted that jurisdiction to determine whether admissions have been granted by the Self Financed College are valid, or otherwise, is vested with the Committee and the Committee has not raised any objection regarding the same.

##. Affidavit-in-reply is filed on behalf of the respondent No.3 - GSF Association. It is submitted that after a long drawn litigation and pursuant to the orders passed by the Hon'ble Supreme Court of India, Common

Entrance Test for the purpose of granting admission in management quota was conducted by the respondent No.3 Association and on the basis of marks obtained by those students who appeared at the said Common Entrance Test, admissions were granted on the basis of the merit order prepared. It is also further submitted that said process was completed in the presence of the representative of all the member colleges including the representative of the respondent No.2 institute and the said process was completed on 31.7.2004. It is further submitted that after grant of admission, once again, litigation went on between the respondent No.3 GSF Association on one hand and on the other hand the Government of Gujarat as well as Justice R.J.Shah (Retd.) Committee. Finally, on or about 16.9.2004 controversy came to an end since Hon'ble the Supreme Court upheld the test conducted by the respondent No.3 Association. It is further submitted that after orders passed by the Hon'ble Supreme Court upholding the proceedings of Common Entrance Test conducted by the respondent No.3 association and the admissions granted by the said Association, as stated above, on 16.9.2004 the respondent No.3 Association requested all the members of the Association to furnish the details about the vacancies if any which have occurred after granting admissions on 31.7.2004 and first such request / requisition was sent by the Association to all the members including the respondent No.2 Institute on 21.9.2004. However, since no response was received till 28.9.2004 and since the deadline of 30.9.2004 was about to be touched, again on 28.9.2004 the reminder was sent to the respondent No.2 along with other members. It is further submitted that many other member colleges forwarded details of vacancies which have occurred in their respective colleges after granting admissions in the management quota, however, there was no response from the respondent No.2 Institute or any information received by the respondent No.3 - Association from the respondent No.2 Institute. It is further submitted that therefore on 8.10.2004 final list of the admissions granted in all members colleges including the respondent No.2 herein interalia specifically mentioning that the final list of the students admitted on or before 30.9.2004 is being forwarded to the respondent No.2. It is also further submitted that said communication was sent by R.P.A.D. as well as a copy of the same was also faxed to the respondent No.2 institute. It is also submitted that in response thereto, Secretary of respondent No.3 association received a letter from the Director of respondent No.2 Institute dated 9.10.2004, by which, the respondent No.2 institute had clarified with regard to only two students i.e. one Bhadiyadra Raj B. whose name

was mentioned at Sr.No.25 who had not turned up and clarification was with regard to one another student i.e. Badal Girishbhai Thakkar i.e. petitioner of Special Civil Application No.5229 of 2005 by clarifying that he has already been admitted on 31.7.2004 and admission order is also given by GSF Association and it was mentioned that name of said Badal Girishbhai Thakkar is not included in the list of management quota seats sent by the GSF Association sent on 8.10.2004. And that there was no mention in the said communication dated 9.10.2004 with regard to admissions given to the petitioners of Special Civil Application Nos.2214 / 2005, Special Civil Application No.5150 / 2005 and Special Civil Application No.5225 of 2005. It is therefoer submitted that till 8.10.2004 the petitioners were not granted admissions.

##. Affidavit-in-rejoinder is also filed on behalf of the petitioners to the affidavit-in-reply filed on behalf of the respondent - Gujarat University. Further affidavit is filed on behalf of the respondent No.2 i.e. Institute. It is submitted in the further reply that the respondent No.2 Institute had sent letter dated 19th August, 2004 to the Secretary, GSF Association after counseling dated 31.7.2004 and the respondent No.2 Institute had asked on many times to the Association to send the list of the students admitted by the Association uptill now and inspite of that no information was provided by the Association. It is further submitted in the further affidavit that thereafter the respondent No.2 Institute received a letter dated 21.9.2004 from the Association which was received by the respondent No.2 on 24.9.2004 whereby the institute was informed that seats remaining vacant will have to be filled up on or before 31.9.2004 (it should be 30.9.2004). It is also submitted in the further reply that the respondent No.2 institute received a letter dated 28.9.2004 wherein for the first time association came out with the concept of some waiting list prepared by it and according to them, no such waiting list was ever prepared, nor such list is produced before any Court. No such list has been provided to any of the colleges. It is further submitted that in the evening of 28.9.2004, two seats had fallen vacant and on 29.9.2004 further two seats had fallen vacant for which an advertisement was given in the local newspaper on 30.9.2004 and in pursuance thereto, all the petitioners applied except the petitioner of Special Civil Application No.5229 of 2005 and they have paid the fees on 30.9.2004. It is also further submitted that in the further reply affidavit that the respondent No.2 bona fide issued public advertisement specifically mentioning that only students coming in the merit list prepared by

the Association based upon the Common Entrance Test will be considered. It is further submitted that the respondent No.2 Institute had confirmed the name and the number of concerned petitioners with merit list and only thereafter had given admission bonafide.

##. Further affidavit is also filed on behalf of the respondent No.2 dated 27.4.2005 in which the some allegations are made aginst the office bearer of the GSF Association and against the GSF Association itself. By further affidavit, the respondent No.2 has tried to contend that admissions in the self financed institute were required to be given by the institute itself and not by the GSF Association and GSF Association was only required to conduct the Common Entrance Test. In the Further-Affidavit allegations are also made against GSF Association in granting admission on reshuffling illegally and dehors the merits.

##. Further affidavit-in-reply to the amended petition is also filed on behalf of the respondent No.3 GSF Association. It is submitted that GSF Association never issued an advertisement and no such application seeking admission was ever submitted with requisite document to the Association on or before after 30.9.2004 by the petitioners. It is further submitted that the association is not aware whether the petitioners were offered admissions by the respondent college on 30.9.2004 and that they are also not aware of the payment of fees by the petitioners to the respondent Institute. It is also further submitted that the petitioners appeared at the Common Entrance Test conducted by the Association of which the respondent Institute is the Member. On the basis of the marks obtained at the said test, merit order was prepared and on the basis of counseling the admissions were given by the Association. It is also further submitted that during this process of granting admission, none of the petitioners were ever granted admission by the Association since their names appeared at the merit list at the lower position. It is further submitted that it is not true to say with regard to the present petitioners that admissions granted to them are granted strictly in accordance with merits and on the basis of the merit list prepared by the GSF Association. It is also further submitted that so far as the process of reshuffling is concerned, the respondent institute had never approached the GSF Association before granting the admissions to the petitioners. With regard to the contention on behalf of the petitioners that role of the Association is very limited for conducting the test only, it is submitted in further affidavit that the association

was obliged to hold Common Entrance Test as per the judgment delivered by the Hon'ble Supreme Court in Islamic Academy Case and it is on the basis of the said merit order prepared based on marks obtained by the candidates in the Common Entrance Test, admissions are required to be given by all the member colleges who have formed Association through which the Common Entrance Test is conducted. It is further submitted that once name of the students do not take place in the merit order based on Common Entrance Test prepared by the Association based on the result and marks obtained in Common Entrance Test, then such students including the petitioners are not entitled to obtain admission from any member college keeping association in dark and such admissions can be termed as "Back-door Admission" and therefore, it is requested to dismiss all the petitions.

##. Heard the learned advocates appearing on behalf of the respective parties. It is an admitted position that the petitioners appeared in the common entrance test conducted by the GSF Association and they were at Serial Nos.171, 333, 471, 588 and 590 respectively in the merit list prepared by the said Association. Counseling for the purpose of admission had taken place by the GSF Association on 31.7.2004 and admissions were given by GSF Medical Association to the member colleges in the management quota inclusive of the respondent No.2 Institute. Therefore, it is not open for the petitioners as well as the respondent No.2 now to contend that so far as the GSF Association is concerned, their role was limited to conduct common entrance test only and not with regard to granting admissions. Till draft amendment was sought on behalf of the petitioners in the month of April, 2005 in the present special civil applications and further affidavit is filed on behalf of the respondent No.2 in the month of April, 2005, neither the petitioners nor the respondent No.2 institute have ever challenged the role of the GSF Association with regard to granting admission in the management quota. From the pleadings, it appears that all through out the GSF Association fought the litigation upto the Hon'ble Supreme Court of India for and on behalf of their members inclusive of the respondent No.2 and defended admissions given by the GSF Association in the respective member colleges. The respondent No.2 institute never challenged the jurisdiction of the GSF Association and all through out allowed GSF Association not only to conduct common entrance test but to give admissions in the management quota also. Therefore, the contention on behalf of the petitioners as well as the respondent No.2 institute now to the effect that admission in the management quota were

required to be given by the concerned institute only and not by GSF association and / or GSF Association was not required to be intimated and / or approval of the GSF Association was not required are nothing but a dishonest attempt on the part of the petitioners and the respondent No.2 institute as it is found that the respondent No.2 institute have given admission to the petitioners in the management quota without intimating to the GSF Association and / or even Justice R.J.Shah (Retd.) Committee (Medical). From the discussion and the finding hereinafter reveals that admissions are given by the respondent No.2 institute to the petitioners not on 30.9.2004 as alleged but are given subsequently and the petitioners as well as the respondent No.2 have tried to make a show that admissions are given on 30.9.2004. It is required to be noted that as per the judgment of the Hon'ble Supreme Court of India in case of MADHUSINGH case, the respondent No.2 institute could not have granted admission in the first year M.B.B.S. after 30.9.2004 and any admission in the first year M.B.B.S. after 30.9.2004 is considered to be illegal and contrary to the judgment of the Hon'ble Supreme Court in MADHU SINGH case and knowing this, the petitioners as well as the respondent No.2 have tried to make a show that admissions are granted on 30.9.2004.

##. Following are the circumstances which create doubts and credibility of granting of admissions to the petitioners on 30.9.2004.

[i] It is the contention of the petitioners that they were granted admissions by the respondent No.2 on 30.9.2004 and for that purpose, they have firstly relied upon the receipts with regard to the payment of tuition fees issued by the respondent No.2 - Institute dated 30.9.2004. It is required to be noted that so far as the petitioners of Special Civil Application No.2214 of 2005 are concerned, they have produced xerox copies of the receipts dated 30.9.2004 which are at page 11 and 12 (Yashavi Bharat Shah and Rahul Shivkumar Sodani), petitioners of Special Civil Application No.5225 of 2005 and Special Civil Application No.5150 of 2005 are concerned. Petitioner of Special Civil Application No.5150 of 2005 i.e. Nisharg P. Shah has produced typed copy of the receipt dated 30.9.2004 issued by the respondent No.2 Institute. It is required to be noted that though demanded the said petitioner has not produced original receipts and / or even xerox copy of the receipt and so far as the petitioner of Special Civil Application No.5225 of 2005 i.e. Tejendrabhai Ashokbhai Ramani is concerned, even there is no receipt either xerox and / or

typed copy produced to show that even any fees was paid by him on 30.9.2004. The petitioner of Special Civil Application No.5229 / 2005 i.e. Badal Thakkar who is alleged to have been granted admission on 31.7.2004 was also issued admission order by GSF Association has also produced one receipt for payment of Rs.1.29 Lakh dated 30.7.2004 issued by the respondent No.2 which is at Annexure-C at page.17 of Special Civil Application No.5229 of 2005. It is required to be noted that case of Shri Badal Thakkar - petitioner of Special Civil Application No.5229 of 2005 seems to be genuine one as he was at Sr.No.171 on merit list and he was also issued admission order by GSF Association on 31.7.2004 and that he has paid initially an amount of Rs.1000/- at the time of issuance of admission order by GSF Association on 31.7.2004 and by mistake his name does not figure in the list published by the GSF Association. It is required to be noted that so far as the receipt issued in favour of the said Shri Badal Thakkar dated 31.7.2004 issued by the respondent No.2 Institute is concerned, it bears receipt No.35. So far as the receipt relied upon by the petitioners of Special Civil Application No.2214 of 2005 and Special Civil Application No.5150 of 2005 are concerned, there is no receipt number at all on the said receipts issued by the respondent No.2 Institute itself. When a specific and pertinent question was asked with regard to the same, neither the learned advocate appearing on behalf of the petitioners, nor the learned advocate appearing on behalf of the respondent No.2 Institute are in a position to satisfy this Court with regard to the same. Under the circumstances, the receipts relied upon the petitioners of Special Civil Application Nos.2214 of 2005 and Special Civil Application No.5150 of 2005 to show that fees are paid on 30.9.2004 do not inspire any confidence and cannot be relied upon and it appears that only with a view to make show that admissions are granted on 30.9.2004 and in fact the tuition fee is paid on 30.9.2004 and the said receipts are produced which do not bear any receipt numbers.

(ii) It is the case of the petitioners and the respondent No.2 that the seats in the management quota had fallen vacant on 28.9.2004 and 29.9.2004 and the respondent Institute had issued advertisement inviting applications on 30.9.2004 and on 30.9.2004 the petitioners applied for admission in management quota and on very day, they got admission and paid the fees. Thus, it is the case of the petitioners and the respondent No.2 that they have got admission on 30.9.2004. It is required to be noted at this stage that the advertisement

which is published in local newspaper on 30.9.2004 is in local newspaper "SAMBHAV" and judicial notice can be taken that the said local newspaper "SAMBHAV" is not having wide publication. It is required to be noted at this stage that by communication dated 8.10.04 the GSF Association sent final list of admissions granted in all member colleges including the respondent No.2 institute specifically mentioning that final list of the students admitted on or before 30.9.2004 to the respondent No.2 Institute. The communication dated 8.10.2004 by GSF Association to the respondent No.2 institute which is annexed with the affidavit-in-reply filed on behalf of the respondent No.3 GSF Association reads as under :

"By Regd. A.D. & Fax Date : 8.10.04

To
The Dean
Kesar Sal Medical College
Ahmedabad.

Sub : Submission of Final list of the students admitted in your college through the GSF Medical and Paramedical Association as per the Hon'ble Supreme Court guide line.

Respected Sir,

As per the Supreme Court guideline we have conducted the common entrance examination for the management quota in member colleges of GSF Medical and Paramedical Association. In further the guidelines laid down by the Hon'ble Supreme Court in the case of MCI Vs. Madhusingh & Ors. passed in SLP No.14919 / 2000 (2002) 7 SSC 258 - admission of 1st year should be completed before 30th Sept. Accordingly herewith we are sending the final list of the students admitted before 30th of Sept. in your respective institute from the merit list of the students successfully gone through the entrance examination conducted by the GSF Medical and Paramedical Association for the management quota of the member colleges.

Kindly find the enclosure.

Thanking you,

For, GSF MEDICAL AND PARA MEDICAL ASSOCIATION
Sd/-
DR.M.K.SHAH
Vice President

Copy to :
1. Member Secretary, Justice R.J.Shah Retd.
Admission Committee (Medical), Gandhinagar.
2. Registrar, Gujarat University,
3. Centralized admission committee, B.J.Medical
College, Ahmedabad.
4. Medical Council of India, New Delhi."

Along with the said communication, a list of names of 50 students was sent, in which, the names of the petitioners do not figure. It is required to be noted that on receipt of the said communication dated 8.10.2004 and the list of the students who were granted admission in the management quota in the respondent No.2 Institute on or before 30.9.2004 and the final list of the admissions in the management quota, the respondent No.2 institute vide communication dated 9.10.2004 objected to the said final list so far as only two students are concerned, of them, one with regard to Bhadiyadra Raj B. and another Badal Girishbhai Thakkar. Communication dated 9.10.2004 by the respondent No.2 institute to the Secretary, GSF Association in response to the letter dated 8.10.2004 and the final list submitted by the GSF Association reads as under :

"By Regd. AD on 9.10.2004

Adarsh Foundation
KESAR SAL MEDICAL COLLEGE AND RESEARCH INSTITUTE
Block No.254-55, Sola Kalol Road, Opp.Science City, Village Bhadaj, Tal.Dascroi, District Ahmedabad 380060.

To, Date : 9.10.2004
The Secretary,
GSF Medical & Paramedical Association,

Ref : Your Letter dated 8.10.2004.

Dear Sir,

We have received your letter dated 8.10.2004 on 9.10.2004. In the same letter Sr.No.25 Bhadiyadra Raj B. is listed but the same student has not turned up uptill now, so he has not been admitted. At the same time we would like to inform you that the student named Thakkar Badal Girishbhai (Seat No.4239 & Merit No.171) has been admitted on 31.7.2004 with the presentation and submission of receipt of Rs.1000.00 and admission order given by GSF Medical and Paramedical Association dated 31.7.2004. Thakkar Badal Girishbhai is not included in your sent list of 50 management quota students.

Please note and do the needful.

Thanking you,

Yours faithfully,
Sd/-
Dr.Nitin Shah
Director,
Kesar Sal Medical College and Research Institute."

Thus, the respondent No.2 institute objected to the final list with regard to aforesaid qua two students only and on 9.10.2004 the respondent No.2 institute did not even inform and/or intimated to association with regard to admissions given to the petitioners of Special Civil Application No.2214, 5225 and 5150 of 2005 to whom according to the petitioners and respondent No.2 were granted admissions on 30.9.2004. If in fact, the aforesaid petitioners were granted admissions in the management quota by the respondent No.2 on 30.9.2004, in that case, the respondent No.2 ought to have informed the GSF Association in the communication dated 9.10.2004 itself on receipt of the final list from the GSF Association on 8.10.2004 and ought to have informed the said association that over and above said Badal Girishbhai Thakkar and Bhadiyadra Raj B., the names of the petitioners are also required to be included in the said list as they are already granted admissions on 30.9.2004 and that would have been the natural conduct and reaction on the part of the respondent No.2 institute. Having not done so and not clarifying the same and clarifying the list qua the aforesaid two students i.e. Badal Girisbhai Thakkar and Bhadiyadra Raj B. only, it is crystal clear now that the petitioners were never admitted on 30.9.2004 and it is only a show on the part of the respondent No.2 and the petitioners that they were granted admissions on 30.9.2004. As stated above, date 30th September, has some significance as after 30th September, 2004 admissions could not have been granted in the 1st year M.B.B.S. course as per the judgment of the Hon'ble Supreme Court of India in case of MCI VS. MADHUSINGH AND OTHERS referred to above.

(iii) Another reason why the admissions in favour of the petitioners are required to be considered as back door admissions or dehors the merits list prepared by the GSF Association on the basis of the common entrance test. Initially, admissions as on 31.7.2004 were given upto the Sr.No.292 of the merits order and the petitioner of Special Civil Application No.5150 of 2005 was at

Sr.No.333, petitioner of Special Civil Application No.5225 of 2005 was at Sr.No.471 and petitioners of Special Civil Application Nos.2214 of 2005 were at Sr.Nos.588 and 590 in the merit order prepared by the GSF Association. Thus, all the petitioners were much below in the merit list prepared by the GSF Association on the basis of the common entrance test conducted by them and were not in position to get admission even in management quota on merits. Admissions are granted by all the concerned Member institutes on the basis of the counseling by the GSF Association on the basis of the merit list prepared by the GSF Association. By communication dated 29.9.2004, the respondent No.2 institute and other institutes were directed to inform the seats which had fallen vacant. The respondent No.2 institute has tried to suggest that seats had fallen vacant in the evening on 28th September, 2004 and 29th September, 2004 and without intimating to the GSF Association the seats which had fallen vacant, the respondent No.2 - institute behind the back of the GSF Association and even behind the back of Justice R.J.Shah (Retd.) Committee (Medical) gave admissions to the petitioners and have tried to make a show that admissions are granted on 30.9.2004.

##. From the above factual aspects and circumstances, it can be safely concluded that admissions are not given to the petitioners except the petitioner of Special Civil Application No.5229 of 2005 on 30.9.2004 as alleged, otherwise, the names of the petitioners would have been mentioned and intimated and / or informed by the respondent No.2 institute atleast on 9.10.2004 when the respondent No.2 on receipt of the final list of the students granted admission in the management quota, objected with regard to only two students and there was no reference at all by the respondent No.2 institute with regard to granting of admission to the petitioners on 30.9.2004. As stated above, if the petitioners would have been granted admissions on 30.9.2004 as alleged then in the communication dated 9.10.2004 itself, in that case, there should have been a reference to the admissions already granted by the respondent No.2 institute to the petitioners alleged to have been granted on 30.9.2004. As stated above, even considering their position in the merit list i.e. 333, 471, 588 and 590 and considering the fact that last admission was given to students upto Serial No.292 in the merit list and therefore also, the petitioners were not even entitled to admissions on merits as they were much below in the merit list. Considering facts and circumstances of the case and considering the stand taken by GSF Association, it

cannot be said safely that the petitioners are granted admission in accordance with law and on merits. Under the circumstances, the petitioners are not entitled to any relief as prayed for in the present special civil application as it appears that the petitioners as well as the respondent No.2 have not with clean hands inasmuch as the admissions alleged to have been given on 30.9.2004 are granted in most suspicious manner and do not inspire any confidence.

##. After affidavit-in-reply is filed on behalf of the GSF Association, the petitioners as well as respondent No.2 had tried to challenge the jurisdiction and authority of the GSF Association to grant admissions in the management quota in the member Institutes. But apart from the fact that the said admission is an after thought and but for the reasons stated above, it is not open for the respondent No.2 and / or the petitioners to challenge the authority and the jurisdiction of the GSF Association to grant admission in the management quota in the respondent No.2 institute, more particularly, till the affidavit-in-reply and / or amendment is sought and filed, they never objected to the same and even first counselling was done for the purpose of admission in the management quota by GSF Association even in the respondent No.2 which was never objected to by the respondent No.2 - Institute. In the further affidavit-in-reply as well as amendment, the petitioners as well as the respondent No.2 have made some allegations against the conduct of the GSF Association for granting admission in 1st year M.B.B.S. Association on reshuffling and the procedure adopted by them and they have tried to show that even the respondent No.2 GSF Association is also not above suspicion and their conduct is also required to be considered and that they have also not come out with clean hands for granting admission in the 1st year M.B.B.S. on reshuffling and there is no transparency while granting admission by GSF Association on reshuffling and that admissions are given on reshuffling to the students who are having less marks and who are much below in the merit list. This Court is not required to consider the said aspect at this stage as it is ultimately for the Justice R.J.Shah (Retd.) Committee (Medical) constituted pursuant to the orders passed by the Hon'ble Supreme Court of India to look into the same and to consider the same for future admissions and to take care with regard to such situation. So far as the petitioners are concerned, as stated above, admissions alleged to have been given on 30.9.2004 are in most suspicious manner and in fact, they are not granted admissions on 30.9.2004 for the reasons stated above and

therefore, they are not entitled to any reliefs in the present special civil applications as the admissions are given dehors the merits without intimating to the GSF Association as well as Justice R.J.Shah (Retd.) Committee (Medical) and their admissions are "back-door admissions".

##. Looking to the conduct of the respondent No.2 Institute i.e. Kesar Sal Medical and Research Institute at one point of time, this Court even thought to refer the matter to the Medical Council of India for taking suitable and appropriate action against the respondent No.2 institute and this Court even called upon the learned advocate appearing on behalf of the respondent No.2 Institute to make submissions as to why the matter should not be referred to the Medical Council of India and the learned advocate appearing on behalf of the respondent No.2 was heard at length. However, considering the scope of the present Special Civil Applications, at present the matter is not referred to the Medical Council of India and this Court refrain from passing any order referring the matter to the Medical Council of India. However, looking to the conduct of the respondent No.2 - Institute and the way in which the admissions were given by the respondent No.2 Self Financed Institute, this Court warns the respondent No.2 that in future if such type of activity is continued and/or if there is any illegality and/or malpractices found to have been committed by the respondent No.2, the matter can be referred to the Medical Council of India. With this warning and note of caution to the respondent No.2, the matter rests here. Even there are allegations against the GSF Association by the respondent No.2 Institute which is also one of the members of the said Association and the allegations are made with regard to malpractices committed at the time of granting admission at the reshuffling level and allegations are also made that admissions are given after reshuffling by the GSF Association dehors the merits and there is no transparency at all. However, considering the scope of the present special civil applications, this Court has thought it fit not to pass any order against the GSF Association. It is ultimately for the Justice R.J.Shah (Retd.) Committee (Medical) to look into the same and take appropriate care and instruct the Self Financed Institutes to have transparency even at the time of granting admissions at the stage of reshuffling and to supervise and to find out a way at the time of granting admissions in the self financed institutes on the last date to avoid any irregularity and/or illegality and malpractices to be committed by the self financed

institutes while granting admissions on the last date under the guise that they were not having sufficient time and the seats were being lapsed. With these observations, no further orders are passed even against the GSF Association.

##. Under the circumstances, all the aforesaid Special Civil Applications Nos.2214 of 2005, Special Civil Application No.5150 of 2005 and Special Civil Application No.5225 of 2005 are required to be dismissed and are accordingly dismissed.

Notice, in all three aforesaid petitions, are discharged. Ad-interim relief granted earlier stands vacated.

##. So far as Special Civil Application No.5229 of 2005 is concerned, from the documentary evidence, it appears that the petitioner was at Serial No.171 in the merit list prepared by the GSF Association on the basis of the common entrance test and that he was issued admissions card by GSF Association dated 31.7.2004 granting admission to the petitioners in respondent No.2 Institute and petitioner had paid Rs.1000/- towards initial fees with GSF Association and Rs.1.29 Lakh towards tuition fees on 31st July, 2004 for which he has relied upon receipt which bear receipt number and date 31.7.2004 and considering the fact that the respondent No.2 - Institute on receipt of the final list of the students granted admission in the management quota from the GSF Association on 8.10.2004, has objected to non inclusion of the name of the petitioner i.e. Badal Girishbhai Thakkar in the said final list, who was granted admission on 31.7.2004 and therefore, considering the facts and circumstances of the case, it appears that there seems some bonafide mistake on the part of the GSF Association in not including his name in the final list of all the students who are granted admission in the management quota in respondent No.2 institute and considering the fact that last student who was granted admission in the management quota was listed at Sr.No.292 in the merit list and the petitioner was at Sr.No.171. Accordingly, present Special Civil Application No.5229 of 2005 succeeds and the respondent No.4 - Gujarat Self Financed Medical and Paramedical Association is directed to send its enrollment / certification that the petitioner is admitted on merits within a period of two weeks from the date of receipt of this order and on receipt of the same the respondent No.1 - Gujarat University is directed to act accordingly and consider the case of the petitioner for enrollment within a period of four weeks thereafter.

Rule is made absolute to the aforesaid extent so far as Special Civil Application No.5229 of 2004 is concerned.

Direct Service is permitted.

Date : 13.5.2005 [M.R.Shah, J.]

#kailash#